

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CENGAGE LEARNING, INC., BEDFORD,
FREEMAN & WORTH PUBLISHING GROUP,
LLC d/b/a MACMILLAN LEARNING,
ELSEVIER INC., MCGRAW HILL LLC, and
PEARSON EDUCATION, INC.,

Plaintiffs,

v.

TRUNG KIEN NGUYEN, DUY ANH NGUYEN,
DUONG THI BAY, XUAN CHINH NGUYEN,
TUAN ANH NGUYEN, VINH NGOC NGUYEN,
LÊ TRANG, VAN QUYNH PHAM, THI LIEN
PHUONG NGUYEN, VAN TUAN DANG, HIEN
VO VAN, QUANG NGUYEN, JESSICA
GOLDBERG, MAXIM GUBCEAC, TRACEY
LUM, RODNEY MOUZONE, ZAINEE JALLAL,
LUU VAN DOAN, BUI HAI LINH, MOHD
HANIFF HASLAM, RAFAN WASEEF, SAMEER
YAMAN, STEFAN DEMETER, SHAHZAD
HAIDER, ERIKA DEMETEROVA, ROSTISLAV
ZHURAVSKIY, SUSAN RAGON, WALESKA
CAMACHO, ANJUM AKHTER, HASEEB
ANJUM, MUHD IZHAN KHAIRUL, VU XUAN
TRUONG, BINH NGUYEN, ANTHONY
TORRESI, MICHAEL MCEVILLEY, CORNELL
KILLEBREW, MOHD ALI KAMIL, ADAM
HAROLD, ABDUL RAHIM MOHSIN, REFAT
HAMOUDA, MOHAMED SABEK, DO THANH
DUY, CRIS AUSTIN, and WASRI WAMIN,

Defendants.

Case No. 20-cv-769-JGK-SDA

**[PROPOSED] DEFAULT JUDGMENT
AND PERMANENT INJUNCTION**

JOHN G. KOELTL, District Judge:

Plaintiffs Cengage Learning, Inc., Elsevier Inc., McGraw Hill LLC, and Pearson Education, Inc. (collectively, "Plaintiffs") initiated this action on January 29, 2020 against Doe Defendants. Compl., ECF No. 1. At the same time that they filed the Complaint, Plaintiffs filed

an *ex parte* application for a Temporary Restraining Order, expedited discovery, Order to Show Cause why a Preliminary Injunction should not issue, and alternate service by email, which the Court granted on January 29, 2020. *Ex Parte* Order, ECF No. 11. Plaintiffs served the Doe Defendants by email with the *Ex Parte* Order, their moving papers, the Complaint, and the Summons. *See* Decl. of Service, ECF No. 9. After a show cause hearing, at which Defendants did not appear, the Court issued a Preliminary Injunction against the Doe Defendants on February 24, 2020. Prelim. Inj., ECF No. 14. On March 19, 2020, upon Plaintiffs' motion, the Court issued an Amended Preliminary Injunction. Am. Prelim. Inj., ECF No. 25. After conducting expedited discovery, Plaintiffs filed the Amended Complaint on July 1, 2020, naming Defendant Michael McEvilley, amongst others, ("Defendant" or "McEvilley") on July 1, 2020. ECF No. 36. Plaintiffs served the Amended Complaint and Summons on Defendant on August 31, 2020. ECF No. 100. Defendant did not file Answers or otherwise respond to the Complaint or the Amended Complaint. On Plaintiffs' supporting papers, on August 20, 2021, the Clerk of the Court entered a Certificate of Default against Defendant McEvilley. ECF No. 146.

On August 31, 2021, Plaintiffs submitted an Order to Show Cause and memorandum in support of their request to enter a default judgment and permanent injunction against Defendant pursuant to, *inter alia*, Rules 55(b) and 65(d) of the Federal Rules of Civil Procedure. ECF Nos. 148-153.

On October 11, 2022, the Court issued an Order determining that Plaintiffs are entitled to a default judgment and referred the case to Magistrate Judge Aaron to conduct an inquest. ECF No. 165.

On November 2, 2022, Plaintiffs filed their Proposed Findings of Fact, Memorandum of Law, and Declaration in support of the inquest. ECF Nos. 169-171.

On November 21, 2022, Magistrate Judge Aaron issued his Report & Recommendation (“Report & Recommendation”), recommending that Plaintiffs be awarded \$1,500,000 in statutory damages; a permanent injunction be entered in Plaintiffs’ favor; a post-judgment asset restraint be imposed; the automatic stay of Federal Rule of Civil Procedure 62(a) be dissolved to allow for immediate enforcement of the judgment; and the judgment provide for the transfer of Defendant’s frozen assets to Plaintiffs. ECF No. 174.

On January 11, 2023, the Court issued an Order indicating that it was adopting the Report & Recommendation. ECF No. 176.

NOW, THEREFORE, having adopted the Report & Recommendation and reviewed the entire record herein, the Court HEREBY FINDS that:

A. Plaintiffs are higher education publishers. Plaintiffs’ publications include physical and digital textbooks that are widely available in the United States to consumers and sold through direct sales channels and legitimate distributors and stores, including through online sales.

B. Defendant intentionally reproduces and distributes for sale electronic, infringing copies of Plaintiffs’ copyrighted textbooks. Defendant does so through websites he owns and/or operates. Defendant’s websites named in the original Complaint and additional websites identified by Plaintiffs through third-party discovery in this action are listed as “Infringing Sites - Original Complaint” and “Infringing Sites - Associated Sites,” respectively, on Appendix A hereto (collectively, “Infringing Sites”).

C. Defendant has been properly served in this action with the Complaint, the Amended Complaint, and the Summons;

D. Because Defendant has not filed an Answer, otherwise responded to the Complaint or the Amended Complaint, or otherwise appeared in this action, the Clerk of Court entered default against Defendant on August 20, 2021;

E. Plaintiffs own the copyrights or exclusively control all rights, title, and interest in their respective works described on Exhibit C to the Amended Complaint (the “Authentic Works”), which is appended hereto as Appendix B;

F. Defendant has willfully infringed Plaintiffs’ copyrights in the Authentic Works in connection with Defendant’s reproduction and distribution of unauthorized copies of Plaintiffs’ textbooks, and Defendant, therefore, is liable for willful copyright infringement under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;

G. Defendant’s willful infringement of Plaintiffs’ copyrights in the Authentic Works has caused Plaintiffs irreparable harm;

H. As a result of Defendant’s unlawful conduct, Plaintiffs are entitled to the entry of a final judgment and permanent injunction against Defendant.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, in accordance with Federal Rule of Civil Procedure 65(d), Defendant, his officers, agents, servants, employees, and attorneys, and all those in active concert or participation with him, are permanently enjoined and restrained from directly or indirectly infringing the copyrights owned or exclusively controlled by any of the Plaintiffs (or any parent, subsidiary, or affiliate of a Plaintiff), whether now in existence or later created.

Without limiting the foregoing, IT IS FURTHER ORDERED that, in accordance with Federal Rule of Civil Procedure 65(d), Defendant, his officers, agents, servants, employees, and attorneys, and all those in active concert or participation with him, are permanently enjoined and

restrained from engaging in any of the following acts:

- 1) Directly or indirectly infringing any copyrighted work that is owned or exclusively controlled by any of the Plaintiffs (“Plaintiffs’ Textbooks”), i.e., any copyrighted work published under any of the imprints identified on Appendix C hereto;
- 2) Copying, reproducing, manufacturing, downloading, uploading, transmitting, distributing, selling, offering to sell, advertising, marketing, promoting, or otherwise exploiting any of Plaintiffs’ Textbooks without Plaintiffs’ express written authorization;
- 3) Enabling, facilitating, permitting, assisting, soliciting, encouraging, or inducing the copying, reproduction, manufacture, download, upload, transmission, distribution, sale, offering for sale, advertisement, marketing, promotion, or other exploitation of any of Plaintiffs’ Textbooks without Plaintiffs’ express written authorization; and
- 4) Using, hosting, operating, maintaining, creating, or registering any computer server, website, domain name, domain name server, cloud storage, e-commerce platform, online advertising service, social media platform, or payment processing service to enable, facilitate, permit, assist, solicit, encourage, or induce the infringement of Plaintiffs’ Textbooks, as set forth in subparagraphs (1) through (3) above.

IT IS FURTHER ORDERED that, pursuant to 17 U.S.C. § 504(c), Plaintiffs’ request for statutory damages under the Copyright Act is granted, and Plaintiffs are awarded statutory damages of \$1,500,000 against Defendant for his willful infringement of ten of Plaintiffs’ Authentic Works.

IT IS FURTHER ORDERED that, in accordance with Federal Rule of Civil Procedure 69(a) and N.Y. C.P.L.R. § 5222(b), Defendant, his officers, agents, servants, employees, and attorneys, and all those in active concert or participation with him, and any financial institutions, i.e., banks, payment processing companies, savings and loan associations, credit card companies, credit card processing agencies, merchant acquiring banks, or other companies or agencies that engage in the processing or transfer of money and/or other assets (“Financial Institutions”), who receive actual notice of this Order, must immediately cease transferring, withdrawing, or otherwise

disposing of any money or other assets in accounts holding or receiving money or other assets of Defendant's, or in which Defendant has an interest (with "Defendant" for purposes of this provision meaning those persons described by the names, aliases, and/or email addresses identified on Appendix A), including but not limited to those accounts specified on Appendix D hereto ("Defendant's Accounts"), or allowing such money or other assets in Defendant's Accounts to be transferred, withdrawn, or otherwise disposed of, until such time as the judgment set forth herein is satisfied.

IT IS FURTHER ORDERED that the stay to enforce a judgment imposed by Rule 62(a) of the Federal Rules of Civil Procedure is hereby dissolved and Plaintiffs may immediately enforce the judgment set forth herein.

IT IS FURTHER ORDERED that in accordance with Federal Rule of Civil Procedure 64, N.Y. C.P.L.R. § 5225, and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, Financial Institutions holding currently restrained assets in Defendant's Accounts shall release such assets to Plaintiffs in partial satisfaction of the damages award set forth herein within ten (10) business days following actual notice of this Order.

IT IS FURTHER ORDERED that Defendant shall deliver to Plaintiffs for destruction all electronic copies of Plaintiffs' Textbooks, or derivative works thereof, that Defendant has in his possession, custody, or control, and all devices by means of which such copies have been created, pursuant to 17 U.S.C. § 503.

IT IS FURTHER ORDERED that the Clerk of Court is hereby directed to release the \$10,000 cash bond, posted in accordance with the *Ex Parte* Order, to Plaintiffs by sending it to their attorneys of record, Oppenheim + Zebrak, LLP, at 4530 Wisconsin Avenue, NW, 5th Floor, Washington, DC 20016.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over the parties and the subject matter of this litigation for the purpose of interpretation and enforcement of this Permanent Injunction.

FINAL JUDGMENT is hereby entered in favor of Plaintiffs against Defendant Michael McEvilley in the total amount of \$1,500,000, as described above, plus post-judgment interest calculated at the rate set forth in 28 U.S.C. § 1961.

It is SO ORDERED this 20 day of January, 2023.



HON. JOHN G. KOELTL

United States District Judge

DEFAULT JUDGMENT APPENDIX A
Cengage Learning, Inc., et al. v. Trung Kien Nguyen, et al., Civil Action No. 20-cv-769-JGK

Defendant's Aliases	Infringing Sites - Original Complaint	Email Addresses	Infringing Sites - Associated Sites
Adam Haris Hamzah	ebookspot.shop	ahmadanwaribin zakaria@outlook.my	bestbookz.myshopify.com**
Ahmad Anwari Zakaria	fridaycollection.myshopify.com	azmeerkh@gmail.com	books4days.myshopify.com
Ahwaz Business	ka-shopp.myshopify.com	blizzardbooks@outlook.com	ebookspot.myshopify.com
Aiman Hakim Tajul Ariffin	kiwibookclub.myshopify.com	books4kimi@gmail.com	pdfxpress.com
Anwari Business	payversitystore.myshopify.com	ebookspot2019@gmail.com	
Blizzardbooks	smart-edu-store.myshopify.com	fdaycollection.contact@gmail.com	
Books4Kimi	studentnclass.myshopify.com	help.pdfxpress@gmail.com	
Danial Hungry		ibrahimrosfan01@gmail.com	
hakim hamidi		Icmxmedia@gmail.com	
hazuan ramli		info.koalaprint@gmail.com	
Irisrosey		info.payversitystore@gmail.com	
Khairul Azmeer		info.pdfxpress@gmail.com	
Khalis Md Shah		Info.StudentNClass@gmail.com	
Michael A Mcevilly II		info.uberbooks@gmail.com	
Mike McEvilly		info.uberbooks@gmail.com	
Mohammad Ahlan Ahmad Ahwaz		kiwibookclub21@gmail.com	
Muhammad Nizar Saiddin		kiwibookclub21@gmail.com	
Rebecca Lowley		lavishsupplyo@gmail.com	
Roslan Ibrahim		mohammadahlan87@outlook.com	
syafiq hakimi		mohammadahlan87@outlook.com	
		myfavoritethings02@gmail.com	
		myfavoritethings02@gmail.com	
		nizarsaiddin72@outlook.com	
		nizarsaiddin72@outlook.com	
		paulpaxton18@gmail.com	
		prezhall1@gmail.com	
		prezhall1@gmail.com	
		shop.bestbook@gmail.com	
		shop.bestbookz@gmail.com	
		smartedu.contact@gmail.com	
		smartedu.contact@gmail.com	
		surelyskateco@gmail.com	

DEFAULT JUDGMENT APPENDIX B

Cengage Learning, Inc., et al. v. Trung Kien Nguyen, et al., Civil Action No. 20-cv-769-JGK

PUBLISHER	TITLE	REGISTRATION NUMBER
Cengage	A Guide to Crisis Intervention, 6th	TX0008764631
Cengage	Essentials of Statistics for the Behavioral Sciences, 8th	TX0008390253
Cengage	Foundations of Marketing, 8th	TX0008702724
Cengage	Principles of Microeconomics, 8th	TX0008816580
Elsevier	Pharmacology and the Nursing Process, 8th	TX0007165716
McGraw Hill	Drugs, Society, and Human Behavior, 17th	TX0008733303
McGraw Hill	Marketing, 7th	TX0008778862
McGraw Hill	Taxation of Individuals, 8th	TX0007929583 TX0008738099
Pearson	Campbell Biology, 11th	TX0008472354
Pearson	Pharmacology for Nurses A Pathophysiologic Approach, 5th	TX0008241655

DEFAULT JUDGMENT APPENDIX C

Cengage Learning, Inc., et al. v. Trung Kien Nguyen, et al., Civil Action No. 20-cv-769-JGK

Cengage Learning	Macmillan Learning
Brooks Cole Cengage Cengage Learning Course Technology Delmar Gale Heinle Milady National Geographic Learning South-Western Educational Publishing Wadsworth	Bedford, Freeman & Worth High School Publishers Bedford/St. Martin's BFW BFW High School Publishers Freeman Macmillan Learning W.H. Freeman & Company Worth Worth Publishers
Elsevier	
Academic Cell Academic Press Amirsys Butterworth Heinemann Digital Press Elsevier Gulf Professional Publishing Hanley & Belfus Knovel Made Simple Books	Medicine Publishing Morgan Kaufmann Publishers Mosby Newnes North Holland Saunders Urban & Fischer William Andrew Woodhead Publishing
McGraw Hill	
Irwin Lange McGraw-Hill McGraw-Hill Education McGraw-Hill Higher Education McGraw-Hill Professional McGraw-Hill Ryerson McGraw-Hill/Appleton & Lange McGraw-Hill/Contemporary McGraw-Hill/Dushkin McGraw-Hill/Irwin McGraw Hill NTC/Contemporary Osborne Schaum's	Addison Wesley Adobe Press Allyn & Bacon Benjamin Cummings Brady Cisco Press Financial Times Press/FT Press IBM Press Longman New Riders Press Peachpit Press Pearson Pearson Education Que Publishing Sams Publishing

DEFAULT JUDGMENT APPENDIX D

Cengage Learning, Inc., et al. v. Trung Kien Nguyen, et al., Civil Action No. 20-cv-769-JGK

<u>Financial Institution</u>	<u>Account Number</u>
Bank of America	*8518
Bank of America	*1773
Bank of America	*6518
PayPal	*8345
PayPal	*1445
PayPal	*9779
PayPal	*9284
PayPal	*3162
PayPal	*2730
PayPal	*9006
PayPal	*9610
PayPal	*0005
PayPal	*3356
Stripe	*7E9t
Stripe	*LTAc
Stripe	*AKA8
Stripe	*f5yP
Stripe	*FLe1
Stripe	*u4vv
Stripe	*UX6B
Stripe	*oZIG